IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1452 of 2007

Vijayalakshmi .. Petitioner

Vs.

1. The Secretary to the Government
   Food, Co-operation and Consumer
   Protection Department, Chennai-9.

2. The District Collector and
   District Magistrate,
   Villupuram District, Madurai.

3. The Secretary to the Government
   Food and Consumer Protection Department
   Government of India, New Delhi. .. Respondents

Petition under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.V.Parthiban
For Respondents : Mr.N.R.Elango
Additional Public Prosecutor

O R D E R
(Made by P.D.DINAKARAN,J.)

The petitioner, who is the wife of the detenu, Ravi @ Ravichandran, who was detained at Central Prison, Cuddalore, pursuant to the order of detention dated 16.9.2007 passed under Sections 3(2)(a) read with 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, (Act 17 of 1980) branding him as 'Black Marketeer', has filed this writ petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of detention dated 16.9.2007 passed by the second respondent in Ref.No.C2/40758/2007, to set aside the same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

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2. According to the detaining authority, viz., the second respondent, the ground case is said to have taken place on 11.9.2007. On receipt of credible information that the provisions of Essential Commodities Act, 1955, are being violated or may be violated, the Inspector of Police, CSCID, along with his police party conducted a surprise check in Janakipuram Village, Villupuram to Trichy Main Road. On seeing the police party, the detenu tried to escape, but was caught by the police. They found 63 bags consisting of 50 kgs of ration rice stored in thick bushes. During interrogation, the detenu gave a voluntary statement admitting the offence, on the basis of which a case was registered in Cuddalore CSCID Cr.No.296/07 under Section 6(4) of TNSC (RDCS) Order 1982 read with Section 7(i) a (ii) of Essential Commodities Act, 1955. The detenu was arrested and sent for judicial remand.

3. The second respondent, taking note of the four adverses cases of alike nature and having satisfied that the activities of the detenu are prejudicial to the maintenance of supplies of essential commodities, under the Public Distribution System, passed the detention order under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, branding him as 'Black Marketeer'. Hence, the present petition.

4. Mr.V.Parthiban, learned counsel for the petitioner challenges the impugned order of detention mainly on the ground of delay in considering the representation made on behalf of the detenu. Hence, we do not propose to go into the other aspects of the case.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the Government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

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5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. Coming to the the case on hand, admittedly, objecting to the order of detention dated 16.9.2007, a representation was made on behalf of the detenu on 24.9.2007, which was received by the Government on 4.10.2007. Remarks were called for from the detaining authority on 5.10.2007, which was received by the detaining authority on 8.10.2007. The detaining authority, in turn, called for parawar remarks from the sponsoring authority on 11.10.2007 and the same was received on 18.10.2007, after a delay of five days, excluding two public holidays. The detaining authority sent it to the Government on 19.10.2007. The file was circulated on 24.10.2007 and the same was considered by the Under Secretary and Deputy Secretary on 24.10.2007 and by the Secretary (CF & CP) and Secretary (Law) on 25.10.2007. The Minister concerned dealt with the file on 31.10.2007. The rejection letter was prepared on 1.11.2007 and was sent on the same day. The delay in considering the representation, as indicated above, was highlighted by the learned counsel for the petitioner. There is no

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convincing reply on behalf of the State for the said delay. We find some force as well as substance in this contention. There is absolutely no explanation for this delay.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

9. The delay which stands unexplained is fatal to the detention order attracting Article 22 of the Constitution of India and therefore, the petition must succeed and the same is ordered as prayed for. The detention order dated 16.9.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

kpl

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

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2. The District Collector and
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   Villupuram District, Villupuram.

3. The Secretary to the Government
   of India, Food and Consumer Protection Department,
   Government of India, New Delhi.

4. The Public Prosecutor,
   High Court, Madras.

+1 cc to Mr.C.Prakasam, Advocate Sr.No.72967.

MRD(CO)
DCP/5.1 HCP No.1452 of 2007.

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